

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4046 of 1998****For Approval and Signature:****HON'BLE MR JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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NAVSARI NAGARPALIKA - Petitioner(s)
Versus
PRAGNESHKUMAR AMRUTLAL DESAI - Respondent(s)

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Appearance :

MR MC SHAH for Petitioner No(s).: 1.

.....for Respondent No(s).: 1.

CORAM : HON'BLE MR JUSTICE KS JHAVERI**Date : 09/08/2005****ORAL JUDGMENT**

1.0 The petitioner has challenged the award dated 23.01.1998 passed by the Labour Court, Navsari, in

Reference (LCN) No. 398 of 1988, whereby the petitioner was directed to reinstate the respondent with 60 % back wages.

2.0 The brief facts of the case are that the respondent herein was appointed as a Rojamdard by the petitioner Nagar Palika. He was relieved from the service on 05.04.1985. Against the said action, the respondent raised a reference on the ground that he was discharged from the service without any Notice or Notice-pay. The Labour Court, after hearing the parties, passed the impugned award. Hence, this petition.

3.0 Mr. S S Gade learned advocate has stated that since the respondent has taken back the papers from him, his name may not be shown as Advocate for the respondent.

4.0 Mr. M C Shah learned advocate for the petitioner has submitted that pursuant to the order of this Court, the respondent has been reinstated in service. He has submitted that the Labour Court in its impugned award has observed that during the interim period the respondent was employed by some Co-operative Society. Therefore, the respondent cannot be said to be entitled for any back

wages.

5.0 I have heard learned counsel for the petitioner and perused the documents placed on record. Since the respondent workman is already reinstated in service pursuant to the order of this Court, I am not disturbing the said position. The question which is required to be considered by this Court is with regard to the grant of 60 % back wages.

6.0 In the impugned award, the Labour Court has not given any cogent reasons as to on what basis it has awarded 60 % back wages to the respondent. Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

6.1 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host

of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua granting the respondent 60 % back wages is required to be quashed and set aside.

7.0 In above view of the matter, this petition is partly allowed. The impugned award of the Labour Court, Ahmedabad, qua granting the respondent reinstatement in service is confirmed; and, the order qua granting him 60 % back wages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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